

DOCKET FILE COPY ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

RECEIVED

MAY 9 1997

In the Matter of )

Federal Communications Commission  
Office of Secretary

Implementation of the )

Pay Telephone Reclassification )

CC Docket No. 96-128

and Compensation Provisions of the )

Telecommunications Act of 1996 )

To: Chief, Common Carrier Bureau

**Petition for Limited Extension of Waiver**

The New York State Telephone Association, Inc. ("NYSTA"), on behalf of certain of its local exchange carrier ("LEC") members ("Requesting LECs"),<sup>1</sup> by its attorneys and pursuant to 47 C.F.R. §§ 0.91 and 1.3, hereby requests a limited extension of the waiver granted all LECs for the filing of intrastate tariffs for payphone services.<sup>2</sup> The Requesting LECs seek a thirteen day extension, until June 1, 1997, in order to simplify and coordinate their compliance with both Federal Communications Commission (the "Commission") and New York Public Service Commission ("NYPSC") requirements. The Requesting Parties also seek a ruling that grant of the instant modest extension will not affect their continued eligibility to receive the payphone compensation provided pursuant to the Payphone Reclassification Proceeding<sup>3</sup> as of

<sup>1</sup> Attachment A provides a list of the companies on whose behalf this request is made. All LEC members of NYSTA with the exception of NYNEX are parties to this request.

<sup>2</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-805 (rel. April 15, 1997)(Chief, Common Carrier Bureau)("Waiver Order").

<sup>3</sup> In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996)(collectively, "Payphone Reclassification Proceeding").

April 15, 1997 upon certification of compliance with all other requirements set forth in paragraph 131 of the Order on Reconsideration, as provided in the Waiver Order. Grant of this request will serve the public interest by enabling orderly state review in accordance with Federal guidelines. In addition, the limited extension will not undermine the Commission's policy objectives in this proceeding. In support thereof, NYSTA shows the following:

**I. Background and Nature of Relief**

The Requesting LECs made good faith efforts to make all necessary intrastate tariff filings on January 15, 1997, as required by the Commission in its Payphone Reclassification Proceeding and, to the best of their understanding, in accordance with the general guidance provided by the December 31, 1996 Order issued by the NYPSC.<sup>4</sup> Late in the NYPSC tariff review process, however, NYPSC Staff informally raised concerns regarding the subject of subsidies. NYSTA worked with NYPSC Staff, suggesting a June 1, 1997 date by which studies addressing NYPSC Staff's concerns could be filed for review by the NYPSC. The NYPSC officially approved this plan as a reasonable and appropriate approach.<sup>5</sup> Under this procedure, if the company-specific study demonstrates that subsidies exist, required tariff revisions are to be filed simultaneously with that Requesting LEC's study.

Inasmuch as the June 1, 1997 date has been established by the NYPSC, the Requesting LECs seek a thirteen-day extension of the deadline established by the Waiver Order to allow for orderly and full compliance with both the Commission's directives and the schedule established

---

<sup>4</sup> The NYPSC's order establishing the state proceeding is attached hereto as Attachment B.

<sup>5</sup> Order Approving Tariffs on A Temporary Basis, Case 96-C-1174, issued April 14, 1997 ("NYPSC Order") at 4. The NYPSC Order is attached hereto as Attachment C.

by the NYPSC. It should be noted that this waiver request will apply only to those Requesting LECs whose cost studies reveal the existence of subsidies, requiring tariff modifications on June 1, 1997; as to those Requesting LECs demonstrating that existing intrastate tariffed rates contain no subsidies, no waiver is necessary.

## **II. The Commission's Goals in this Proceeding will be Served by a Grant of Extension of Waiver**

The Requesting LECs submit that good cause exists for this waiver.<sup>6</sup> The Commission has made clear that the underlying purpose of the Commission's Payphone Reclassification Proceeding and all related requirements is to "reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones."<sup>7</sup> The Commission also has indicated a willingness to accommodate limited waivers where companies have made good faith attempts to comply with the Commission's April 15 tariffing date.<sup>8</sup> The Requesting LECs submit that similar flexibility is appropriate here, where the Requesting LECs have made and continue to make good faith efforts to comply with the directives of the Payphone Reclassification Proceeding.

---

<sup>6</sup> "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); Wait Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>7</sup> Waiver Order at para. 23.

<sup>8</sup> Id. at para. 18.


Grant of the instant request is consistent with previous Commission action and the underlying purpose of the Payphone Reclassification Proceeding. Less than two weeks after the current May 19, 1997 filing deadline, each of the Requesting LECs will have in effect intrastate tariffs that remove the costs of LEC payphones from existing rates to the extent that any subsidy exists. In the absence of waiver, certain of the Requesting LECs will not be able to secure interim compensation, thereby frustrating the Commission's objective of ensuring fair compensation for all calls originated from such Requesting LEC's payphones. In the instant case, therefore, the goals of the Commission will be better served by a limited waiver of, rather than adherence to, the May 19 tariffing date.

### **III. Conclusion**

In light the special circumstances described herein, the promotion of the Commission's goals, and the public interest to be served, NYSTA respectfully submits that grant of this request for limited extension of waiver is appropriate and warranted.

Respectfully submitted,

**The New York State Telephone Association, Inc.**

By:   
Sylvia Lesse  
Thomas J. Moorman  
Margaret D. Nyland

Kraskin & Lesse, LLP  
2120 L Street, NW  
Suite 520  
Washington, D.C. 20037  
(202) 296-8890

Its Attorneys

May 9, 1997

**Attachment A**  
**Member Companies on Whose Behalf**  
**NYSTA is Making the Instant Request for Limited Extension of Waiver**

ALLTEL New York, Inc.  
Armstrong Telephone Company  
Berkshire Telephone Corporation  
Cassadaga Telephone Corporation  
Champlain Telephone Company  
Chautauqua & Erie Telephone Corporation  
Chazy & Westport Telephone Corporation  
Citizens Telecommunications Co. of New York, Inc.  
Citizens Telephone Company of Hammond, New York  
Crown Point Telephone Corporation  
Delhi Telephone Company  
Deposit Telephone Company, Inc.  
Dunkirk & Fredonia Telephone Company  
Edwards Telephone Company, Inc.  
Empire Telephone Corporation  
Fishers Island Telephone Company  
Frontier Communications of AuSable Valley, Inc.  
Frontier Communications of New York, Inc.  
Frontier Communications of Seneca-Gorham, Inc.  
Frontier Communications of Sylvan Lake, Inc.  
Germantown Telephone Company, Inc.  
Hancock Telephone Company  
Margaretville Telephone Company, Inc.  
Middleburgh Telephone Company  
Newport Telephone Company, Inc.  
Nicholville Telephone Company  
Ogden Telephone Company  
Oneida County Rural Telephone Company  
Ontario Telephone Company, Inc.  
Oriskany Falls Telephone Corporation  
Pattersonville Telephone Company  
Port Byron Telephone Company  
Rochester Telephone Corp.  
State Telephone Company  
Taconic Telephone Corp.  
Township Telephone Company, Inc.  
Trumansburg Home Telephone Company  
Vernon Telephone Company, Inc.  
Warwick Valley Telephone Company

## **Attachment B**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on December 18, 1996

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman  
Eugene W. Zeltmann  
Thomas J. Dunleavy

- CASE 96-C-1174 - Proceeding on Motion of the Commission to Review Regulation of Coin Telephone Services Under Revised Federal Regulations Adopted Pursuant to the Telecommunications Act of 1996.
- CASE 93-C-0142 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, Chapter VI, Telephone and Telegraph Corporations, Subchapter D, Records, Reports -- Proposed Amendments to Part 650 by Repealing the Existing Part and Replacing it with a New Part 650 - Regulations Applicable to COCOTS, filed in C 27946.

ORDER INSTITUTING PROCEEDING

(Issued and effective December 31, 1996)

BY THE COMMISSION:

On September 20, 1996 the Federal Communications Commission (FCC) issued a report and order, pursuant to the Telecommunications Act of 1996, adopting revised regulations relative to coin telephone (payphone) services.<sup>1/</sup> On November 8, 1996, the FCC issued an order ruling on petitions for reconsideration wherein it modified those regulations to a minor extent.<sup>2/</sup> The new Federal regulations significantly affect this Commission's regulation of payphone services provided both by local exchange carriers (LECs) as well as "independent" providers of customer-owned, coin operated telephones (COCOTs). Included within the new rules are requirements: to detariff and

---

<sup>1/</sup> FCC 96-388, Report and Order in CC Docket Nos. 96-128 and 91-35.

<sup>2/</sup> FCC 96-439, Order on Reconsideration in CC Docket Nos. 96-128 and 91-35.

deregulate LEC payphone (traditional coin telephone) terminal equipment by April 15, 1997; that LECs file tariffs by January 15, 1997, to take effect by April 15, 1997, unbundling the bottleneck elements from the terminal equipment elements of their payphone services and offering, on a regulated basis, the bottleneck elements to all providers on a non-discriminatory basis; and that by April 15, 1997, states remove from regulated intrastate rates any subsidies of LEC payphone terminal equipment.

The new federal rules deregulate local coin telephone service rates within one year of the effective date of the regulations, except where states demonstrate that there are failures in the marketplace which result in competition not being adequate to assure consumer protection. Within one year of the effective date of the regulations, states must eliminate any payphone market entry or exit restrictions that are competitively biased or restrictive. Directory Assistance (411) calls will be subject to market-based rates.

The new Federal regulations also allow states to set up programs to fund the placement of "public interest" payphones, which are found necessary for health, safety or other public welfare reasons, but which would not otherwise exist due to market factors. States may also continue or adopt payphone price disclosure and other consumer information requirements under the rules. As well, the rules require that payphones, at no charge, give end users access to dial tone, emergency response agencies (911), and relay services for the hearing or speech impaired.

#### DISCUSSION

The new Federal payphone rules fundamentally change the nature of payphone regulation in New York, and place numerous transitional requirements on the Commission and the LECs. While the new Federal rules do not end all State regulation of payphone services, they significantly affect the authority of state Commissions, and place various requirements on the Commission and



LECs operating in New York to amend existing regulations and tariffs. These include deregulating non-bottleneck payphone terminal equipment and operations, rate unbundling, removing from rates for all regulated intrastate services any subsidies of payphone terminal equipment, and establishing processes to evaluate the competitiveness of the payphone market and the need for and funding of public interest payphones. Under the rules all coin telephones, including those provided by LECs (which currently number approximately 150,000) as well as customer owned or leased currency operated telephones (COCOTs) (which today number about 50,000), will be treated similarly for regulatory purposes.

In addition to affecting the Commission and the industry, the Federal payphone regulations may have a significant impact on consumers of intrastate coin telephone services. Under the regulations, after November 6, 1997, the Commission will no longer have local coin rate authority, unless competition in the marketplace is inadequate to assure consumer protection and the Commission identifies this "market failure" and is able to convince the FCC of its existence.<sup>1/</sup>

In order to fully assess the ramifications of the rules, and adjust LEC tariffs and Commission regulations so as to comply with them, yet afford consumers adequate protection, a new proceeding will be instituted. In addition, LECs must file accounting information relative to deregulation of payphone terminal equipment, studies which quantify and identify the source of any current intrastate subsidies of non-bottleneck payphone terminal equipment or operations, and tariff revisions to unbundle bottleneck payphone service elements and remove any non-bottleneck payphone subsidies from intrastate rates, as required by the Federal regulations.

---

<sup>1/</sup> The FCC's rules are subject to challenge in federal court.

We also reactivate Case 93-C-0142, the COCOT regulation revision proceeding, work on which was suspended in March 1996 in anticipation of the new Federal payphone regulations.

The Commission orders:

1. A proceeding is instituted to address and implement the requirements of the new Federal payphone regulations, in conjunction with Case 93-C-0142.
2. Local exchange carriers are directed to file 15 copies contemporaneously with this Commission the information they are required to file by January 15, 1997, with the Common Carrier Bureau of the FCC pertaining to accounting of the investments and expenses associated with non-bottleneck payphone operations, which will become deregulated on April 15, 1997;
3. Local exchange carriers are directed to file 15 copies of studies which quantify the amount and identify the sources of any current intrastate subsidies of non-bottleneck payphone terminal equipment or operations by January 15, 1997, the same date they are required to file such information with the FCC.
4. Local exchange carriers are directed to file 15 copies of tariff revisions by January 15, 1997, to take effect by April 15, 1997, which unbundle payphone bottleneck network access lines and essential features from payphone terminal equipment, avail the bottleneck elements to all providers on a non-discriminatory basis, and remove from intrastate rates all subsidies of non-bottleneck payphone equipment or operations.
5. Local exchange carriers are directed to transfer, by April 15, 1997, non-bottleneck payphone equipment and operations to non-regulated status, either within companies, in which case the Commission's Cost Allocation Manual (CAM) rules should apply, or to structurally separate affiliates, in which case the Commission's Affiliate Transaction Rules should apply.

CASES 96-C-1174 and 93-C-0142

6. These proceedings are continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary

## **Attachment C**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 9, 1997

COMMISSIONERS PRESENT:

John F. O'Mara, Chairman  
Eugene W. Zeltmann  
Thomas J. Dunleavy

CASE 96-C-1174 - Proceeding on Motion of the Commission to  
Review Regulation of Coin Telephone Services  
Under Revised Federal Regulations Adopted  
Pursuant to the Telecommunications Act of  
1996.

ORDER APPROVING TARIFFS ON A TEMPORARY BASIS

(Issued and effective April 14, 1997)

BY THE COMMISSION:

We instituted this proceeding in response to new Federal regulations which substantially change the manner in which coin telephone services are regulated and the states' regulatory role.<sup>1/</sup> In addressing the first major changes required under the new Federal rules, we directed all local exchange carriers, including independents, to file tariff revisions by January 15, 1997, to take effect by April 15, 1997, which unbundle payphone bottleneck network access lines and essential features from payphone terminal equipment, avail the bottleneck elements to all providers on a non-discriminatory basis, and remove from intrastate rates all subsidies of non-bottleneck payphone equipment or operations. We also directed all LECs to transfer, by April 15, 1997, non-bottleneck payphone equipment and operations to non-regulated status, either within companies, in which case the Commission's Cost Allocation Manual (CAM) rules will apply, or to structurally separate affiliates,

---

<sup>1/</sup> Order Instituting Proceeding (issued and effective December 31, 1996) (the December Order).

in which case the Commission's affiliate transaction policies will apply.

The ILECs' Tariff Revisions

Thirty nine ILECs and NYSTA filed tariff revisions, bearing an effective date of April 15, 1997, which remove coin telephone terminal equipment services from these companies' tariffs and introduce additional payphone bottleneck service elements.<sup>1/</sup>

Generally, the new payphone bottleneck offerings consist of introducing "coin supervision" service as an option to existing public access line (PAL) service, which is used by independent payphone providers to provide customer owned, coin operated telephones (COCOTs). The optional availability of this coin supervision feature will allow the independent payphone providers to continue providing payphone services through use of "smart" (microprocessor-equipped) payphones, as they now do, or to utilize the same types of less expensive, "dumb" (passive) payphone sets that the telephone companies have historically used to provide their own payphone services.

Although coin telephone terminal equipment and related items are being removed from the ILECs' tariffs, in all cases "local coin" rates remain listed in the rates sections of the tariffs, with no change in the rate levels that are currently in effect. Under the FCC regulations, states retain authority over local coin rates until at least November 6, 1997, and may retain local coin rate regulation beyond that point, if "market failures" in the provision of local payphone services are identified.<sup>2/</sup>

---

<sup>1/</sup> The Commission previously approved, on a temporary basis, New York Telephone's relevant tariff revisions. See Order Approving Tariff on a Temporary Basis (issued and effective March 31, 1997).

<sup>2/</sup> The Commission and several other state commissions are seeking Federal court review of certain aspects of the FCC's payphone regulations.

While competitive payphone providers have expressed reservations that some of the proposed ILEC payphone bottleneck service offerings may not provide them with full competitive equity, there have been no complaints or formal comments received regarding the proposed tariff changes.

The ILEC tariff revisions to de-tariff payphone terminal equipment and offer bottleneck payphone elements, which we find in partial compliance (as discussed below) with the Commission's December Order in this proceeding, as listed in Appendix 1, are approved to go into effect, on a temporary basis, on April 15, 1997. While no flaws in the proposed tariff structures or rate levels are apparent, they have not been tested in the competitive payphone marketplace. Therefore, only temporary approval is granted at this time.

Emergency Action under the State Administrative Procedure Act

The notice required under the State Administrative Procedure Act (SAPA) for Rochester Telephone Corp.'s (RTC) tariff revisions was published February 26, 1997. Thus, the notice and comment period required under SAPA section 202(1) expires April 12, 1997, and did not run in time for our April 9, 1997 session. However, we find that immediate adoption under SAPA section 202.6 of RTC's tariff changes is necessary to protect the general welfare of telephone customers in New York, because it will advance competition in the provision of payphone services, as intended by the FCC. Moreover, a delay in approving RTC's tariff until April 30, 1997 would place RTC in violation of the FCC's order.

Local Payphone Service Cost Studies and Removal of Subsidies of Payphone Services from Non-payphone Intrastate Rates

The ILECs indicate that they did not consider that the FCC coin regulation rulings required that they identify and remove intrastate non-payphone rate subsidies by April 15, 1997,

even though that Federal requirement<sup>1/</sup> is echoed in the Commission's December Order. Based on this view, the ILECs did not file cost studies to identify whether and to what extent subsidies of their local payphone services currently flow from other intrastate services, nor did they propose any reductions to other intrastate rates to remove such subsidies, if they do exist. Therefore, the ILECs have not complied with Clause 3, and have not fully complied with Clause 4, of the December Order.

Upon staff inquiry about the ILEC's failure to file cost studies, NYSTA proposed a process wherein the ILECs will undertake and complete studies which identify the revenue being generated by, and the revenue requirement associated with, their provision of intrastate payphone services as of April 14, 1997, or as soon thereafter as possible, and submit the results to the Commission for review by June 1, 1997. Also, by that date the ILECs will file tariff revisions to eliminate from rates for non-payphone intrastate services any intrastate payphone subsidies identified in the studies. NYSTA also requested an extension of time to comply with the December Order as necessary to accommodate its proposed schedule.

NYSTA's request is reasonable. Accordingly, we grant the request of the ILECs for an extension of time, until June 1, 1997, to comply with the payphone intrastate rate subsidy identification and removal provisions of Ordering Clauses 3 and 4 of the December Order.<sup>2/</sup> However, we also suggest that the ILECs request from the FCC an extension of time to comply with

---

<sup>1/</sup> See FCC 96-388, Report and Order in CC Docket Nos. 96-128 and 91-35, Paragraph 186.

<sup>2/</sup> We note that the FCC payphone regulations appear to be structured so as to give ILECs a strong incentive to remove such subsidies on their own initiative, because they do not qualify to receive compensation from interexchange carriers for use of their payphones to originate 800- and 10XXX access code calls, at the interim rate of \$45.85 per payphone per month, until such time as intrastate payphone subsidies are removed from their rates.



its orders, because the ILEC's inaction with regard to the intrastate payphone subsidy issue also apparently puts them out of compliance with FCC orders.

Revenue Effect

The ILECs' local coin service rates, and rates for PAL services now used by independent payphone providers, are generally not affected by these filings. In addition, no other intrastate rates are now being adjusted to eliminate coin service subsidies. Therefore, the revenue effects of these filings are insignificant.

The Commission orders:

1. The New York State Telephone Association's and the independent local exchange companies' tariff filings to modify their coin telephone service offerings in partial compliance with new Federal regulatory requirements are approved on a temporary basis, effective April 15, 1997.

2. The New York State Telephone Association's and the independent local exchange companies' tariffs may not become permanent until so ordered by the Commission.

3. With respect to Rochester Telephone Corp.'s tariff page revisions, this order is adopted on an emergency basis pursuant to section 202(6) of the State Administrative Procedure Act for reasons stated herein.

4. The New York State Telephone Association's and the independent local exchange companies' request for an extension of time, to June 1, 1997, to comply with the payphone intrastate rate subsidy identification and removal provisions of ordering clauses 3 and 4 of our order instituting this proceeding is granted.

5. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary